

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

RENE URENA GONZALEZ,

Movant,

v.

**CRIMINAL INDICTMENT NO.
1:05-cr-250-WSD**

**CIVIL FILE NO.
1:13-cv-4305-WSD**

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

This matter is before the Court on Magistrate Judge Janet F. King's Final Report and Recommendation ("R&R") [267], on Movant Rene Urena Gonzalez's ("Movant") Motion under 28 U.S.C. § 2255 [266].

I. BACKGROUND¹

In June 2009, the Court denied Movant's first § 2255 motion, which challenged his conviction under the above criminal docket number. On December 13, 2013, Movant filed this Motion, which is another § 2255 motion that challenges his earlier conviction. Movant did not seek permission from the Eleventh Circuit to file a successive § 2255 motion.

On January 8, 2014, the Magistrate Judge issued her R&R, recommending that Movant's Motion be denied because he did not obtain the Eleventh Circuit's permission before filing a successive § 2255 motion. The Magistrate Judge further recommended that a certificate of appealability not be issued, because reasonable jurists could not disagree that Movant must obtain permission from the Eleventh Circuit before filing a second § 2255 motion. Movant did not object to the R&R.

II. DISCUSSION

A. Legal Standard

After conducting a careful and complete review of the findings and

¹ The facts are taken from the R&R and the record. The parties have not objected to any facts set out in the R&R, and finding no plain error in the Magistrate Judge's findings, the Court adopts them. See Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993) (noting that "[b]ecause [Plaintiff-Appellant] did not file specific objections to *factual findings* by the magistrate judge, there was no requirement that the district court *de novo* review those findings" (emphasis in original)).

recommendations, a district judge may accept, reject or modify a magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Crim. P. 59; Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982), cert. denied, 459 U.S. 1112 (1983). A district judge "shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This requires that the district judge "give fresh consideration to those issues to which specific objection has been made by a party." Jeffrey S. v. State Bd. of Educ. of Ga., 896 F.2d 507, 512 (11th Cir. 1990) (internal quotation marks omitted). With respect to those findings and recommendations to which objections have not been asserted, the Court must conduct a plain error review of the record. United States v. Slay, 714 F.2d 1093, 1095 (11th Cir. 1983), cert. denied, 464 U.S. 1050 (1984).

B. Analysis

The Magistrate Judge found that Movant did not obtain permission from the Eleventh Circuit before filing his successive § 2255 action. The Magistrate Judge recommended that Movant's Motion be denied, and the Court finds no plain error in this recommendation. See 28 U.S.C. § 2255(h); Farris v. United States, 333 F.3d 1211, 1216 (11th Cir. 2003) ("[T]o file a second or successive § 2255 motion, the movant must first file an application with the appropriate court of appeals for

an order authorizing the district court to consider it Without authorization, the district court lacks jurisdiction to consider a second or successive petition.”)

The Magistrate Judge determined that it is not debatable that Movant must first obtain permission from the Eleventh Circuit before filing a successive § 2255 motion. The Magistrate Judge recommended that a certificate of appealability not be issued to Movant, and the Court finds no plain error in this recommendation.

See Slack v. McDaniel, 529 U.S. 473, 484 (2000).

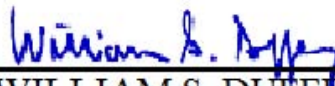
III. CONCLUSION

Accordingly, for the foregoing reasons,

IT IS HEREBY ORDERED that Magistrate Judge Janet F. King’s Final Report and Recommendation [267] is **ADOPTED**, and Movant’s Motion is **DENIED**.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

SO ORDERED this 9th day of April, 2014.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE